

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists. This regulation is being adopted as an emergency regulation necessary for the immediate preservation of the general welfare, within the meaning of Government Code Section 11346.1.

Description of Specific Facts Which Constitute the Emergency:

The Department of Food and Agriculture has found that oak mortality disease (sudden oak death) caused by a fungus, *Phytophthora ramorum*, presents a clear and present danger to the native stands of oak and other trees, the nursery industry, other agricultural commodities and plant life (including ornamental plantings) of California. The Department adopted Section 3700 to implement a program to arrest the artificial spread of the disease. Continued action is necessary to contain and minimize the destructive impact of this pest and disease at the earliest possible time. On April 9, 2004, the Administrator of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) issued the first emergency order restricting the interstate movement of nursery stock from California nurseries located outside the area regulated under Section 3700. On April 22, 2004, USDA, APHIS issued a new order that replaced that issued on April 9, 2004. On April 23, 2004, USDA, APHIS issued a clarification of its April 22, 2004 order. Through this last federal emergency order and its subsequent clarification, the USDA, APHIS identified additional plant species as regulated associated articles and as such, these associated articles are prohibited interstate movement from all California nurseries unless properly certified under the provision of the federal emergency order. On April 29, 2004, the USDA, APHIS amended the plant species listed as regulated associated articles and there are now a total of 31 species. As a result, it is immediately necessary to harmonize the State's regulation governing the intrastate movement of nursery stock with the federal emergency order. Therefore, the Department is proposing to add the associated articles contained in the federal emergency order to the list of articles and commodities covered by Section 3700.

The Department proposes to amend this regulation because it is necessary to modify the authority for an established statewide program in order to arrest the artificial spread of the disease to additional areas and harmonize this regulation governing the intrastate movement of nursery stock with the federal emergency order that governs the interstate movement of California nursery stock. Immediate amendment of this regulation is necessary to mitigate the effects of this disease on the agricultural industry, which includes native tree stands. Additionally, it is necessary to immediately

harmonize this regulation with the federal emergency order to avoid more stringent federal restrictions being placed against the State to prevent the interstate movement of articles and commodities that may carry *Phytophthora ramorum*. Without the immediate implementation of this proposed regulatory action, the USDA, APHIS may consider the entire state as infested with *Phytophthora ramorum*, rather than just the current 12 regulated counties. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California commodities by our international trade partners.

Specific facts and circumstances clearly also indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department is therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The Department has determined that *Phytophthora ramorum* is a serious forest pest for which control is required to prevent further spread and harm to forests, parks, commercial and urban landscapes, and watersheds. This disease is known to occur in 12 California counties. Oak mortality disease is serious due to the fact that it kills tanoak, coast live oak, and black oak trees. The pest has been confirmed as infecting Shreve's oak and non-oak species such as rhododendron, huckleberry, bigleaf maple, California buckeye, California coffeeberry, manzanita, and toyon causing foliar and stem disease symptoms.

Therefore, the Department is proposing to amend Section 3700(c) to add the following associated articles to the regulation: *Abies grandis* (grand fir), *Aesculus hippocastanum* (horse chestnut), *Arbutus unedo* (strawberry tree), *Camellia reticulata* (a camellia), *Camellia x williamsii* (a camellia), *Castanea sativa* (sweet chestnut), *Corylus cornuta* (California hazelnut), *Fagus sylvatica* (European beech), *Kalmia latifolia* (mountain laurel), *Leucothoe fontanesiana* (drooping leucothoe), *Pieris formosa* var. *forrestii* (Chinese pieris), *Pieris formosa* var. *forrestii* x *Pieris japonica* (pieris), *Pittosporum undulatum* (Victorian box), *Pyracantha koidzumii* (Formosa firethorn), *Quercus cerris* (European turkey oak), *Quercus falcata* (Southern red oak), *Quercus ilex* (Holm oak), *Quercus rubra* (Northern red oak), *Rhamnus purshiana* (cascara), *Rubus spectabilis* (salmonberry), *Syringa vulgaris* (lilac), *Taxus baccata* (European yew), *Toxicodendron diversiloba* (poison oak), *Vaccinium vitis-idaea* (lingonberry), *Viburnum davidii* (David viburnum), *Viburnum farreri* (=V. *fragrans*)

(Fragrant viburnum), *Viburnum lantana* (Wayfaringtree viburnum), *Viburnum opulus* (European cranberrybush viburnum), *Viburnum x burkwoodii* ((burkwood viburnum), *Viburnum x carlcephalum* x *V. utile* (viburnum) and *Viburnum x pragense* (Prague viburnum).

This amendment of Section 3700(c) will establish that the above named associated articles are included as regulated articles and commodities. If the disease is allowed to spread and become established in additional areas, California's agricultural industry will suffer losses due to the death of trees in native stands and ornamental plantings and loss of markets if other states or countries enact quarantines against California products.

To prevent artificial spread of the disease to non-infested areas to protect California agricultural industry, it is necessary immediately to establish and enforce restrictions on the movement of these 29 associated articles and potential carriers that can move this pest from the infested area. Therefore, it is necessary to amend Section 3700(c) on an emergency basis.

Authority and Reference Citations

Authority: Sections 407, 5321 and 5322, Food and Agricultural Code.

Reference: Sections 24.5, 5321, and 5322, Food and Agricultural Code; Sections 11425.50 and 11440.10, Government Code; Section 1084 *et seq.*, Code of Civil Procedure.

Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code, Section 5322).

Section 3700(c). Oak Mortality Disease Control.

This proposed amendment of the regulation will add *Abies grandis* (grand fir), *Aesculus hippocastanum* (horse chesnut), *Arbutus unedo* (strawberry tree), *Camellia reticulata* (a camellia), *Camellia x williamsii* (a camellia), *Castanea sativa* (sweet chesnut), *Corylus cornuta* (California hazelnut), *Fagus sylvatica* (European beech), *Kalmia latifolia* (mountain laurel), *Leucothoe*

fontanesiana (drooping leucothoe), *Pieris formosa* var. *forrestii* (Chinese pieris), *Pieris formosa* var. *forrestii* x *Pieris japonica* (pieris), *Pittosporum undulatum* (Victorian box), *Pyracantha koidzumii* (Formosa firethorn), *Quercus cerris* (European turkey oak), *Quercus falcata* (Southern red oak), *Quercus ilex* (Holm oak), *Quercus rubra* (Northern red oak), *Rhamnus purshiana* (cascara), *Rubus spectabilis* (salmonberry), *Syringa vulgaris* (lilac), *Taxus baccata* (European yew), *Toxicodendron diversiloba* (poison oak), *Vaccinium vitis-idaea* (lingonberry), *Viburnum davidii* (David viburnum), *Viburnum farreri* (=V. *fragrans*) (Fragrant viburnum), *Viburnum lantana* (Wayfaringtree viburnum), *Viburnum opulus* (European cranberrybush viburnum), *Viburnum x burkwoodii* ((burkwood viburnum), *Viburnum x carlcephalum* x V. *utile* (viburnum) and *Viburnum x pragense* (Prague viburnum) as regulated associated articles of *Phytophthora ramorum*, which causes Oak Mortality Disease, and will establish that such nursery stock will be subject to restrictions on handling and movement. The effect of the proposed amendment will be to provide authority for the State to regulate movement of additional associated articles and potential carriers of disease from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3700 does not impose a new mandate on local agencies or on school districts.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.